

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

DATE: JUN 21 1976

B-184561

MATTER OF:

Gustav W. Muehlenhaupt - Claim for per diem
administratively disallowed due to thirty-minute
rule

DIGEST:

Employee performing temporary duty (TDY) assignment was denied reimbursement of per diem for quarter beginning 6 p.m. on June 6, 1975, since he returned to residence at 6:15 p.m. after returning from TDY by earliest possible air transportation. Agency interprets provisions of Federal Travel Regulations (FPMR 101-7) para. 1-7.6e (May 1973) concerning thirty-minute rule as requiring denial of employee's claim, absent "compelling extenuating circumstances." While agency's determination concerning "official necessity" under para. 1-7.6e will not be disturbed unless arbitrary or capricious, employee's claim may be allowed since record fully supports employee's contention that due to official necessity, he could not have arrived prior to beginning of quarter.

This action is in response to a request from Roland V. Johnson, an authorized certifying officer with the National Park Service, Department of the Interior. Mr. Johnson questions whether he may pay an additional quarter of per diem in the amount of \$7 to Mr. Gustav W. Muehlenhaupt, an employee of the National Park Service (NPS), under the circumstances described below.

Mr. Muehlenhaupt, whose permanent duty station was in San Francisco, California, was ordered to perform temporary duty (TDY) at the Grand Canyon National Park from June 2, 1975, through June 6, 1975. Incident to that TDY assignment, Mr. Muehlenhaupt was paid for 4 1/2 days' per diem, from 6 a.m., June 2, 1975, through 6 p.m., June 6, 1975. However, Mr. Muehlenhaupt also claimed per diem for the quarter beginning at 6 p.m. on June 6, 1975, on the basis that he did not arrive at his residence until 6:15 p.m. In support of his claim, he submitted with his voucher the following statement, which is quoted in pertinent part:

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"A full day's per diem is claimed for the day of June 6 although I arrived home only 15 minutes after 6 p.m. and not 31 minutes after 6 p.m. My time of return was governed by the airline schedules. The Operations Evaluation Team, of which I serve as Chief, met at 3 a.m. at Grand Canyon National Park on June 6. We then met with the Park Superintendent until after 12 noon; ate a hasty lunch; flew in a 10-passenger, prop driven plane over bumpy air from Grand Canyon to Las Vegas, Nevada; and caught the earliest possible flight to San Francisco. This arrived at San Francisco at 5 p.m. and there was no way in the world I could collect my baggage and drive the forty miles to my residence by 6 p.m. * * *"

His claim was disallowed by the authorized certifying officer for the reason set forth in his memorandum to Mr. Muehlenhaupt, dated June 20, 1975, which is quoted below in pertinent part:

"My understanding of [the Federal Travel Regulations] FPMR 101-7 [para.] 1-7.6(e) is that a quarter day per diem shall not be allowed unless a traveler is in a travel status, at least, 31 minutes after the beginning of the quarter. In your case, your Voucher shows you arrived at your home at 6:15 p.m., only 15 minutes after the beginning of the quarter. You were no longer in travel status after your arrival at your residence.

"The reference in 1-7.6(e) regarding a 'statement explaining the official necessity' is not clear. Presumably, all times of departure and return are official and officially necessary. The provision for a statement of explanation is undoubtedly to establish the mechanism for a deviation when there are compelling extenuating circumstances that justify a

deviation from the general rule established by 1-7.6(e). In my judgment, your statement does not establish sufficient justification for a deviation."

In responding to the above memorandum, Mr. Muchlenhaupt stated that the time of his return was due to official necessity in that he returned to San Francisco, California, by the earliest possible air transportation available. He further states that he "did not tarry anywhere" on the return trip.

The controversy here centers around the so-called "thirty-minute rule," which requires an employee traveling on official business to justify for per diem purposes either his arrival or departure within thirty minutes of the beginning of a quarter. The rule is contained at Federal Travel Regulations (FPMR 101-7) para. 1-7.6e (May 1973), which provides:

"Beginning and ending of entitlement.

For computing per diem allowances official travel begins at the time the traveler leaves his home, office, or other point of departure and ends when the traveler returns to his home, office, or other point at the conclusion of his trip. However, when the time of departure is within 30 minutes prior to the end of a quarter day, or the time of return is within 30 minutes after the beginning of a quarter day, per diem for either such quarter day shall not be allowed in the absence of a statement with the travel voucher explaining the official necessity for the time of departure or return."

When first incorporated into the regulations (Standardized Government Travel Regulations, section 6.9c(2)), the thirty-minute rule applied only to travel by automobile or other non-scheduled means of transportation. See 40 Comp. Gen. 400 (1961). Its purpose was to insure that per diem was not paid where an employee could not document that he was required by official necessity to depart or arrive within thirty minutes of the beginning of a quarter. The regulations were subsequently amended to include regularly scheduled means of transportation within the purview of the rule.

What constitutes "official necessity" is necessarily dependent upon the facts of each case presented. In regard to that, we have previously held that the responsibility for making the administrative determinations as to the acceptability of reasons presented for arriving or departing within thirty minutes of the beginning of a quarter of a day is a matter for the agency concerned, and this Office will not question that determination unless it is clearly shown that the agency's determination was arbitrary or capricious. B-180138, May 2, 1974. However, we believe that in this case the agency's determination relative to the nonacceptability of Mr. Muehlenhaupt's statement was based on an erroneous interpretation of FTR para. 1-7.6e, supra. We believe that that paragraph is not intended to "establish the mechanism for a deviation when there are compelling extenuating circumstances" as stated by the authorized certifying officer. Instead, we believe it was intended to ensure that an employee schedule his departure in a prudent manner and that he complete his return travel in an expeditious manner.

The NPS does not contend that Mr. Muehlenhaupt failed to return by the earliest possible air transportation nor do they argue that, had he been more prudent, he could have arrived at his residence prior to 6 p.m. Rather, the record shows that Mr. Muehlenhaupt arrived in San Francisco at 5 p.m. This left him 1 1/4 hours to disembark, obtain his baggage, locate the parked automobile to be used for transportation to his residence, load the baggage and then drive 40 miles to his residence. We believe that the above record indicates that Mr. Muehlenhaupt did return to his home in an expeditious manner, arriving at his residence at 6:15 p.m. on June 6, 1975.

Accordingly, Mr. Muehlenhaupt may be authorized payment of \$7 representing per diem for the quarter beginning 6 p.m., June 6, 1975.

R. F. Keller

Deputy Comptroller General
 of the United States